THE HON'BLE SRI JUSTICE GHULAM MOHAMMED

M.A.C.M.A.No.397 of 2005

Dated: 27-01-2011

Between:

R.Bala Prasad and another

……..Appellants

and

T.Mala Konda Reddy and another.

……Respondents

THE HON'BLE SRI JUSTICE GHULAM MOHAMMED

C.M.A.No.397 of 2005

JUDGMENT:

This Appeal under Section 173 of the Motor Vehicles Act, 1989 is directed against the award dated 03-02-1999, passed by the IV Additional District Judge-cum-Chairman, Motor Accidents Claims Tribunal, Kurnool, in O.P.No.62 of 1996, filed by the appellants-claimants claiming compensation of Rs.2,00,000/- for the death of one Laxmi Bai (herein after referred to as the 'deceased'), who is the wife of the 1st appellant and mother of the 2nd appellant, in a motor accident when the deceased, along with some others, was proceeding to Kurnool in the vehicle bearing Regn. No.AP-21-TV-2772, a lorry bearing Regn. No.AEN-3247, came in opposite direction, with high speed in a rash and negligent manner and dashed against the right side of their vehicle, due to which, the deceased and some others were died on the spot.

2. Before the Court below, 1st respondent-who is the owner of the crime vehicle, remained *ex parte* and the 2nd respondent, which is the Insurer of the crime vehicle, filed the counter and contested the claim denying all the allegations made in the petition.

3. The Court below having held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle, and taking into account the evidence of the appellant as P.W.1 besides P.Ws.2 and 3, and the document marked under Exs.A-6, awarded Rs.1,04,000/- towards loss of earnings, Rs.5,000/- towards consortium, and Rs.2,000/- towards funeral expenses, in all, the appellants were awarded total compensation of Rs.1,11,000/-. Not satisfied with the award passed by the Court below, the claimants-appellants filed the present appeal.

4. Heard the learned counsel for the appellants and the learned standing counsel appearing for the 2nd respondent-insurer and perused the entire material available on record.

5. Learned counsel for the appellants, especially with regard to the monthly income of the deceased as assessed by the Court below, contended that the Court below failed to assess the monthly income of the deceased and estimated only Rs.1,000/- per month. But at the time of accident, the deceased was a young-lady, aged about 35 years. Further, she was a tailor by profession and was earning an amount of Rs.2,000/- per month. In support of his contention, he relied upon Exs.A-6, certificate, issued by Nehru Youth Club Rural Development Society, Atmakur, showing the income of the deceased. Hence, the compensation awarded by the Court below towards loss of earnings may be enhanced.

6. Learned standing counsel for the 2nd respondent contended that the Court below has awarded compensation more than the appellants actually entitled to, and therefore, there is no necessity for this Court to enhance the award granted by the Court below.

7. As seen from the record, it is no doubt true that due to rash and negligent driving of the driver of the crime vehicle, the accident occurred and due to which, the deceased died. The Court below awarded an amount of Rs.5,000/- towards consortium and Rs.2,000/- towards funeral

expenses, which, in my considered view, may not be interfered with and the same are confirmed.

8. So far as granting of Rs.1,04,000/- towards loss of earnings is concerned, the Court below ought to have taken into consideration the income derived by the deceased from her profession. As contended by the learned counsel for the appellants, the deceased was a young-lady, aged about 35 years, earning income from the profession viz., tailoring. Considering this aspect, her monthly income can be taken at least Rs.2,000/-. Then her annual income comes to Rs.24,000/-. If 1/3rd is deducted, it comes to Rs.16,000/- per annum. According to the age of the deceased, the correct multiplier to be applied is '16'. Then the total loss of earnings can be granted at Rs.2,56,000/- (16000/- (x) 16). Therefore, the appellants-claimants are entitled to a total sum of Rs.2,63,000/- (Rs.2,56,000/-(+) Rs.5,000/-(+) Rs.2,000/-). However, since the appellants-claimants have restricted their claim to an amount of Rs.2,00,000/-, they are granted only a sum of Rs.2,00,000/- towards total compensation.

9. In the result, the appeal is allowed holding that the appellants-claimants are entitled to Rs.89,000/- (Rs.2,00,00/- (-) Rs.1,11,000/-) as enhancement of compensation with 7% interest per annum on the enhanced amount from the date of this order till the date of realization. The award in O.P.No.62 of 1996, dated 03-02-1999, is modified accordingly. There shall be no order as to costs.

January 27, 2011 **JUSTICE GHULAM MOHAMMED**

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